U.S. Department of Homeland Security
20 Mass, Rm. A3042
Washington, DC 20529

U.S. Citizenship and Immigration Services

[redacted]

FILE: [redacted] Office: SAN FRANCISCO DISTRICT OFFICE Date: SEP 23 2008

IN RE: [redacted]

APPLICATION: Application for Waiver of Grounds of Inadmissibility under Section 212(i) of the Immigration and Nationality Act (INA), 8 U.S.C. § 1182(i)

ON BEHALF OF APPLICANT:

[redacted]

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. All documents have been returned to the office that originally decided your case. Any further inquiry must be made to that office.

Robert P. Wiemann, Director
Administrative Appeals Office

DISCUSSION: The waiver application was denied by the District Director, San Francisco. The matter is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The record reflects that the applicant is a native and citizen of India. The applicant was found inadmissible to the United States pursuant to section 212(a)(6)(C)(i) of the Immigration and Nationality Act (INA, the Act), 8 U.S.C. § 1182(a)(6)(C)(i), for fraudulent use of a passport to obtain admission to the United States on or about January 2000. The record reflects that the applicant is the spouse of a U.S. citizen and mother of a U.S. citizen child.

The district director found that the applicant had failed to establish extreme hardship to his U.S. citizen spouse. The application was denied accordingly.

On appeal, counsel contends that the applicant established extreme hardship to her U.S. citizen spouse. In support of the appeal, counsel submits a brief, birth certificate of the applicant's 13-month-old child, a statement from the applicant's husband, and background materials regarding India, Indian culture, child development, and stress.

Section 212(a)(6)(C)(i) of the Act provides:

> In general.—Any alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act is inadmissible.

8 U.S.C. § 1182(a)(6)(C)(i). The district director based the finding of inadmissibility under this section on the applicant's fraudulent misrepresentation in order to gain admission to the United States. *Decision of the District Director* (May 30, 2003) at 2. The district director's determination of inadmissibility is not contested on appeal. Section 212(i) of the Act provides, in pertinent part:

> (i) (1) The Attorney General [now Secretary of Homeland Security] may, in the discretion of the Attorney General [now Secretary of Homeland Security], waive the application of clause (i) of subsection (a)(6)(C) in the case of an immigrant who is the spouse, son, or daughter of a United States citizen or of an alien lawfully admitted for permanent residence, if it is established to the satisfaction of the [Secretary] that the refusal of admission to the United States of such immigrant alien would result in extreme hardship to the citizen or lawfully permanent resident spouse or parent of such an alien . . ."

8 U.S.C. § 212(i). Hardship to the alien herself is not a permissible consideration under the statute. A section 212(i) waiver is therefore dependent upon a showing that the bar to admission imposes an extreme hardship on the U.S. citizen or lawfully resident spouse or parent of the applicant.

The concept of extreme hardship to a qualifying relative "is not . . . fixed and inflexible," and whether extreme hardship has been established is determined based on an examination of the facts of each individual case. *Matter of Cervantes-Gonzalez,* 22 I&N Dec. 560, 565 (BIA1999). In *Matter of Cervantes-Gonzalez,*

the Board of Immigration Appeals set forth a list of non-exclusive factors relevant to determining whether an alien has established extreme hardship to a qualifying relative pursuant to section 212(i) of the Act. These factors include, with respect to the qualifying relative, the presence of family ties to U.S. citizens or lawful permanent residents in the United States, family ties outside the United States, country conditions where the qualifying relative would relocate and family ties in that country, the financial impact of departure, and significant health conditions, particularly where there is diminished availability of medical care in the country to which the qualifying relative would relocate. *Id.* at 566. The BIA has held:

> Relevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists. In each case, the trier of fact must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation. *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996). (Citations omitted).

Once extreme hardship is established, it is but one favorable factor to be considered in the determination of whether the Secretary should exercise discretion. *See Matter of Mendez,* 21 I&N Dec. 296 (BIA 1996).

The AAO notes that the record contains references and documentation addressed to the hardship that the applicant's child would suffer if the applicant were refused admission. Section 212(i) of the Act provides that a waiver of inadmissibility under section 212(i) of the Act is applicable solely where the applicant establishes extreme hardship as to his or her U.S. citizen or lawful permanent resident spouse or parent. Congress excluded from consideration extreme hardship to an applicant's child. In the present case, the applicant's spouse is the only qualifying relative under the Federal statute for which the hardship determination is permissible, and hardship to the applicant's child will not be considered.

The applicant's husband [redacted] was born in India, and immigrated to the United States in 1991. His father is deceased, and his mother lives in the United States. Form G-325, *Biographic Information* (April 25, 2001). The applicant and her husband have one daughter. Counsel asserts that the applicant is "completely dependent on his wife to cook and clean . . . and more importantly, raise his newborn daughter." *Applicant's Brief in Support of Appeal of Denied I-601 Waiver* at 3. Counsel contends that placing the applicant's child in day care or raising her in a single-parent household will have a detrimental impact on the child's development. *Id.* at 3-4.

Counsel submitted country conditions documentation regarding India. Counsel's contentions and evidence regarding India focus primarily on discrimination against female children, particularly on the part of parents who may view the birth of a female child as less advantageous than a male. *See* Applicant's Exhibit H, *Library of Congress Country Studies,* "India." The record does not contain evidence relevant to the effect of possible relocation to India on the applicant's husband in terms of employment, lifestyle, medical care, or other factors that would tend to demonstrate hardship.

Counsel asserts that [redacted] will suffer financial loss due to the added expense of day care. There is no objective evidence regarding the cost of day care relative to his salary. The record does not support a finding of financial hardship to Mr. Sanghera. The cost of day care is a reasonably expected cost of having a child,

whether the applicant is in the United States or not. There is nothing in the record to show that the cost of day care would constitute an extreme hardship, or that he could not avoid incurring this cost by relocating to India with his wife and child. Absent a finding of extreme hardship due to relocation with the applicant, the BIA has held, "[t]he mere election by the spouse to remain in the United States . . . is not a governing factor since any inconvenience or hardship which might thereby occur would be self-imposed." *See Matter of Mansour,* 11 I&N Dec. 306, 307 (BIA 1965). Further, financial difficulties alone are generally insufficient to establish extreme hardship. *See* INS v. Jong Ha Wang, *450 U.S. 139 (1981)* (upholding BIA finding that economic detriment alone is insufficient to establish extreme hardship).

The record does not contain any evidence that any member of the family suffers from a serious medical condition. Counsel asserts tha[redacted] is in danger of developing psychological stress and depression if his wife leaves the United States. *Applicant's Brief, supra,* at 4-5, *Affidavit of Gurdial Sanghera* at 3 (August 22, 2003). It also appears that the applicant raised before the district director the prospect of her mother-in-law's diabetes as contributing to the hardship that her spouse would experience if the applicant were refused admission. There is no documentation of the condition, and counsel does not address the matter on appeal. Therefore, the AAO finds that the evidence of record does not support a finding that any family member suffers from a serious health condition relevant to these proceedings.

The record, reviewed in its entirety and in light of the *Cervantes-Gonzalez* factors, cited above, does not support a finding that[redacted] faces extreme hardship if he either relocates to India with his wife and child or remains in the United States and the applicant is refused admission. Rather, the record demonstrates that he will face no greater hardship than the unfortunate, but expected, disruptions, inconveniences, and difficulties arising whenever a spouse is removed from the United States. [redacted] was apparently able to provide for cooking and cleaning for himself prior to the applicant's entry into the United States, and deprivation of her services in this regard does not support a finding of extreme hardship as contemplated by the statute and case law. Congress provided for a waiver of inadmissibility, but under limited circumstances. In limiting the availability of the waiver to cases of "extreme hardship," Congress did not intend that a waiver be granted in every case where a qualifying relationship exists. Furthermore, the emotional effects that undoubtedly result from the refusal of the applicant's admission in this case appear no greater than that which would be suffered by other families facing the same situation, and do not rise to the level of "extreme." U.S. court decisions have repeatedly held that the common results of removal are insufficient to prove extreme hardship. *See Hassan v. INS,* 927 F.2d 465, 468 (9th Cir. 1991), *Perez v. INS,* 96 F.3d 390 (9th Cir. 1996); *Matter of Pilch,* 21 I&N Dec. 627 (BIA 1996) (holding that emotional hardship caused by severing family and community ties is a common result of deportation and does not constitute extreme hardship); *Matter of Shaughnessy,* 12 I&N Dec. 810 (BIA 1968) (holding that separation of family members and financial difficulties alone do not establish extreme hardship). "[O]nly in cases of great actual or prospective injury . . . will the bar be removed." *Matter of Ngai,* 19 I&N Dec. 245, 246 (BIA 1984).

The AAO therefore finds that the applicant failed to establish extreme hardship to her U.S. citizen spouse as required under INA § 212(i), 8 U.S.C. § 1186(i).

In proceedings for application for waiver of grounds of inadmissibility under section 212(i) of the Act, the burden of proving eligibility rests with the applicant. INA § 291, 8 U.S.C. § 1361. Here, the applicant has not met that burden. Accordingly, the appeal will be dismissed.

ORDER: The appeal is dismissed.